



Seattle City Attorney

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August 25, 2009

The Hon. Richard Conlin, President
Seattle City Council
P.O. Box 34025
Seattle, WA 98124-4025

Re: Appeal of the Director of the Department of Planning and Development
from a recommendation of the Hearing Examiner to deny approval of a
Major Institution Master Plan for Seattle Children's Hospital; CF 308884

Dear Councilmember Conlin:

This appeal is filed on behalf of the Director of the Department of Planning and Development (DPD), pursuant to SMC 23.76.054. The Director requests that the City Council reject the Hearing Examiner's recommendation that the Major Institution Master Plan (MIMP) proposed by Seattle Children's Hospital (Children's) be denied. The recommendation reveals a fundamentally flawed understanding of the master planning process, and of the relationship of the Comprehensive Plan to the Major Institution regulations in the Land Use Code and use of the SEPA Land Use Policy. Acceptance of the recommendation would set an unacceptable policy precedent for major institutions throughout the City, particularly those located outside of Urban Centers or Urban Villages.

Appellant's Interest. DPD is charged with overseeing the preparation of master plans for Major Institutions, administering the master plan approval process, including preparation of any EIS required for a MIMP, providing technical assistance to the Citizen's Advisory Committee (CAC), supervising the preparation of and determining the adequacy of an EIS, specifying the measure to be taken to mitigate adverse impacts of the proposed major institution development and determining whether a proposed MIMP is consistent with SMC Chapter 23.69. With these responsibilities to all Major Institutions, under SMC 23.76.054, DPD is a party "substantially affected by or interested in the Hearing Examiner's recommendation."

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Appellant's Specific Objections to Recommendation.

1. Objections to Conclusions.

- (a) The Hearing Examiner erred in basing her recommendation to deny on inconsistency of Children's MIMP with the Comprehensive Plan's Urban Village policies and goals (conclusions 40, 42-43, 45). The Comprehensive Plan states that "The Plan will not be used to review applications for specific development projects except when reference to this Comprehensive Plan is expressly required by an applicable development regulation." In the Major Institution regulations (SMC ch. 23.69), there are only two references to the Comprehensive Plan, both requiring the Director to include an assessment in her report of the extent to which the Major Institution will address the goals and applicable policies under Education and Employability and Health in the Human Development Element. (SMC 23.69.032.E.3) There are no references in SMC ch. 23.69 to urban village policies, nor for that matter, any land use policy. See attached copy of DPD's Exhibit R-24, chart showing relationship of the Comprehensive Plan to the Code and SEPA Policies.
- (b) The Hearing Examiner erred in ignoring the MIMP's consistency with the Major Institution regulations and the underlying Major Institution policies and goals of the Land Use Element of the Comprehensive Plan.
- (c) The Hearing Examiner erred in finding and concluding that there are significant unmitigated impacts on height, bulk and scale (including the setbacks which provide height transitions recommended by both DPD and the CAC). The transition height across 40th Avenue NE is mitigated by both the width of the street and the DPD-recommended condition of a 50 foot height limit for buildings along the street edge. The transition height across NE 45th Street is mitigated by the width of the street, the 40 foot landscape setback, and the 50th foot height limit. These transitions were not acknowledged by the Hearing Examiner. (Conclusions 19-20, 36-38, 43-46).
- (d) The Hearing Examiner erred in concluding that the maximum heights proposed by DPD and agreed to by Children's are inconsistent with the applicable rezone criteria. The MIOs proposed for the campus boundaries are MIO 37 and MIO 50. DPD correctly determined in its analysis that the proposed height limits at the district boundaries are comparable to the single and multi-family height limits for zones facing the campus. (Conclusions 36-38).
- (e) The Hearing Examiner erred in her Conclusion 38 that proposed heights in a proposed MIMP must be consistent with existing adopted heights in an existing MIMP. If this were true, no major institution would be permitted to increase heights through a proposed Master Plan. (Conclusion 38).

- (f) The Hearing Examiner erred in finding and concluding that there are significant unmitigated impacts on traffic. (Conclusions 24-27 and 44) The Director's Report concludes that the mitigation measures included in the FEIS would adequately mitigate the impacts of the Master Plan's proposed density on circulation, public facilities, infrastructure and open space. As stated in the Hearing Examiner's own conclusion 44, "The City's general policy toward significant, unmitigatable traffic impacts stresses enhancement of non-SOV travel modes that could increase the person-carrying capacity of the transportation system without necessarily increasing vehicle capacity." That is exactly what is being proposed by Children's, an extensive enhancement of non-SOV travel modes. See Appendix D of the FEIS. Those measures are anticipated to reduce the unmitigated traffic levels by 40 to 60 percent.
- (g) The Hearing Examiner erred in stating that between 40 and 60 percent of Children's demonstrated adverse impacts on traffic operations cannot be mitigated. (Conclusion 25). Just the opposite is true; it is anticipated that a 40 to 60 percent improvement in travel time could be achieved as a result of the proposed mitigation (page 3.10-68 of the FEIS).
- (h) The Hearing Examiner erred and inflated her conclusions in stating that Children's would produce thousands of daily trips during peak hour. (Conclusion 44). In fact, the expansion at full build out (in 20 years) would contribute 440 new trips during the PM peak hour, for a combined total of 1,160 trips when added to existing traffic. And expansion at full build out (in 20 years) would contribute 540 new trips in the AM peak hour, for a combined total of 1,340 trips. None of these numbers would be considered "thousands" (See page 3.10-13 of the FEIS).
- (i) The Hearing Examiner erred in stating that "it is essential to scrutinize need relative to alternative development scenarios." (Conclusion 46). This is contrary to the regulations contained in SMC 23.69.030.E.13 that say that a description of the purpose of development shall be provided for informational purposes only. And, SEPA only requires that reasonable alternatives, capable of meeting the proponent's objectives, be analyzed in an EIS, as the Hearing Examiner determined in her February 27, 2009 ruling on the adequacy of the EIS. Neither DPD nor the City Council has engaged in a determination of bed need for other major medical institutions, or in a determination of education needs for major educational institutions.
- (j) The Hearing Examiner erred in concluding that alternatives of less than 2.4 million square feet of development were not provided, as a wide range of alternatives was analyzed in the Draft and Final EISes, and the MIMP itself clearly explains the increments of phased development that may or may not occur over the next 20 years (Conclusion 46).

2. Objections to Conditions.

The Hearing Examiner recognized that the Council could disagree with her recommendation to deny the MIMP and therefore recommended conditions for the Council to adopt if the master plan is approved. The Director objects to certain conditions as follows:

Condition 1 should be amended to read "Children's shall limit total development on the expanded campus to a total of 2.4 million gross square feet, excluding parking and up to 3.5% of mechanical space." This would be consistent with the conditions imposed in the existing MIMP.

Condition 2 should be amended to read "The Floor Area Ratio (FAR) for the expanded campus shall not exceed 1.9, excluding only parking and up to 3.5% of mechanical space." As the FAR is a ratio of gross square footage to the site area, this would make Conditions 1 and 2 consistent with each other. As the Hearing Examiner currently has them written, they are inconsistent in that she excludes all parking from the gross square footage calculation in Condition 1, and then excludes only below-grade parking and rooftop mechanical equipment from the FAR calculation in Condition 2.

Condition 3, moving the line between the 140 foot and 125-foot height limits 50 feet northward, is without foundation and should be stricken.

Condition 6, increasing the south setback to 75 feet, is not supported by either the DPD or CAC recommendations or any support in the record, and should be stricken.

Condition 18, requiring Children's to meet the 30% SOV goal before a MUP for Phase 2 can be issued, is not consistent with Director's Rule 19-2008 or SMC 23.54.016.C, which provides standards and processes for reviewing Major Institution TMPs, and should be stricken.

The second sentence of Condition 19 purporting to allow an exception from the prohibition on renting or leasing to third parties for commercial uses "consistent with the underlying zoning" should be deleted. Commercial uses are not permitted by the underlying L-3 zoning; the exception is meaningless.

The last bullet of Condition 22 should be amended to require the payment of Children's fair share to the future installation of the traffic signals at 40th Avenue NE/55th Avenue NE and at 40th Avenue NE/NE 65th Street prior to the issuance of the Certificate of Occupancy for Phase 1 or

at a time when the traffic signal is determined to be warranted by SDOT, as opposed to before Phase I construction begins. The majority of the traffic impact at these intersections would occur with the start of operation.

3. Objections to Findings:

The Director objects to the following Hearing Examiner findings:

Finding 41. Chapter 2 of the FEIS provides a description of what development would occur, and the amount of square footage added, with each of the proposed four phases of development. (See pages 2-26 and 2-27 of the FEIS). With this information it is relatively easy to determine what facilities might be lost if development square footage might be lost, not "impossible to determine" as stated by the Hearing Examiner.

Finding 57. The exclusion of parking and up to 3.5% of mechanical space from the calculation of gross floor area is consistent with the existing MIMP.

Finding 66. There is no proposal for 160 foot high buildings "massed along Children's boundary on 40th Avenue NE and the south half of Children's boundary along Sand Point Way". As demonstrated in the FEIS, the Director's recommendation, the CAC recommendation, and the exhibits introduced during the hearing, there would be a MIO of 50 feet along this entire length, for a depth of 80 feet from 40th Avenue NE and 30 feet from Sand Point Way. Beyond this 50 foot height restriction, buildings would be limited to 140 feet on the north, and 125 feet on the south. Further, there was no strong public sentiment supporting a further reduction of the CAC-recommended height limits to 105 feet. A 105 height limit was proposed solely in the testimony of the Laurelhurst Community Club president and her consultant.

Finding 76. The Hearing Examiner has vastly overstated the height, bulk and scale impacts by saying that the EIS demonstrates that the proposed MIMP will have significant height, bulk and scale impacts on existing residential areas to the south and west. Appendix C to the FEIS includes worst-case photomontages for 13 viewpoints surrounding the campus for each of the four build and one no-build alternatives. From these 13 viewpoints, the photomontages demonstrate that there would be significant height, bulk and scale impacts from Viewpoints 2, 7 and 8 for all of the build alternatives. These three viewpoints were all taken from Sand Point Way NE at a relatively close range, and are the simulated views seen by a motorist, bicyclist or pedestrian.

The existing residential areas to the south are located south of NE 45th Street and two viewpoints, Viewpoints 3 and 13, were included to demonstrate the change in views. From Viewpoint 3, there would be no change from the existing (no-build) view. From Viewpoint 13, residents located south of NE 45th Street would see a 40 foot wide landscaped buffer and then a 50 foot high garage, with the buildings set back behind the garage. The FEIS did not conclude that this would be a significant height, bulk and scale impact. Single-family residences to the west of the campus are located west of the Burke-Gilman Trail. Viewpoints 11 and 12 were included to demonstrate the view impacts of all alternatives. From Viewpoint 11, the new development would be partially visible in the background (see Table 3.9-2, Viewpoint 11, on page 3.9-7 of the FEIS). From Viewpoint 12, taken right on the Burke-Gilman Trail, new development on the Hartmann site would be largely screened by existing vegetation, including the grove of Sequoia trees to be retained as recommended by DPD, the CAC, and the Hearing Examiner (see Table 3.9-2, Viewpoint 12, on page 3.9-7 of the FEIS). The FEIS did not conclude that there would be significant height, bulk or scale impacts from either Viewpoint 12 or 13.

Finding 86. The number of new PM peak hour trips should be corrected to "440".

Finding 100. Transpo was DPD's consulting transportation engineer, not Children's. Transpo determined that adding a second access on Sand Point Way between the traffic signals at 40th Avenue Northeast and Penny Drive, as suggested by the CAC, would degrade traffic operations on that roadway segment. This finding was concurred with by DPD. Consequently, the DPD Director did not agree with the CAC's recommendations.

Finding 101. The Hearing Examiner incorrectly lists 2,182 as the increase of spaces over existing provided parking. 2,182 is the existing number of parking spaces as of February 2007. Exhibit 6 at 3.10-30 (Figure 3.10-7rev). The needed unmitigated parking supply at full build out has been calculated to be 3,600 spaces, an increase of 1,418 spaces over the existing supply. The FEIS has estimated that the results of the parking demand management strategy, as described in Appendix D, Attachment T-9 to Exhibit 6, would reduce the total demand at full build out to 3,100 spaces, a total *increase* in 918 parking stalls at full build out compared to existing. (Exhibit 6 at D-18).

Finding 103. The Hearing Examiner has misconstrued the conclusion found on page 3.10-68 of the FEIS. The conclusion stated in the FEIS is that "it is anticipated that a 40 to 60 percent improvement

Richard Conlin, President

August 25, 2009

Page 7

could be achieved as a result of this mitigation.” There is no conclusion that significant, unmitigated impacts would remain. Exhibit 6 at 3.10-67 to 3.10-68.

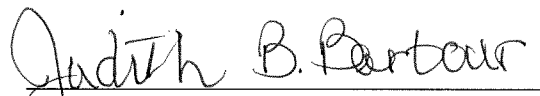
Finding 125. The Hearing Examiner has erroneously cited the amount of square footage added in the previous MIMP as 22,000 square feet. The most recent Children’s master plan and rezones were approved in 1994, and added 262,330 square feet, for a total development area of approximately 900,000 square feet. Exhibit 6 at 2-13.

Relief Requested.

The Director requests the City Council to approve and condition the proposed Seattle Children’s Hospital Major Institution Master Plan as set forth in the Analysis, Recommendation and Determination of the Director dated January 20, 2009 as amended by the Revised Analysis, Recommendation and Determination of the Director dated June 11, 2009. The Director further requests that the decision be made on the existing voluminous record, without remand and without supplementation of the record.

Sincerely,

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Seattle City Attorney

By: 
Judith B. Barbour, WSBA #10601
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*Attorneys for the Director of the
Department of Planning & Development*

Attachment

cc: Diane Sugimura
Cliff Portman

Relationship of Comprehensive Plan, Land Use Code and SEPA Land Use Policy

